



Statement by Senator Dianne Feinstein on the Nomination of
Randy Smith to the 9th Circuit Court of Appeals

Marc 1, 2006

Washington, DC – U.S. Senator Dianne Feinstein (D-Calif.) today announced that she will place a hold on the nomination of Judge Randy Smith to the Ninth Circuit Court of Appeals. The following is a statement entered into the record by Senator Feinstein during the Judiciary Committee hearing on his nomination:

“Thank you, Mr. Chairman.

I am compelled to oppose the President’s transfer of a judgeship from California to Idaho, as it ignores the judicial needs of the 9th Circuit Court of Appeals and its violates the Court’s precedents.

First, I want to be clear that my opposition is not to Judge Randy Smith personally.

My concern is that Californians, who are already severely underrepresented on the 9th Circuit Court of Appeals, will lose yet another judge with this nomination.

There were nearly 10,000 federal appeals in California last year, which is 70% of the 9th Circuit’s total appeals. However, only 50% of the Circuit’s judgeships, 14 out of 28, are assigned to California.

If Judge Smith is confirmed, California would have only 13 of the 9th Circuit’s judgeships. Despite having more than two-thirds of the 9th Circuit’s cases, California would have less than half of its judges.

This allocation of judges is both inefficient and unfair. California needs more judges, not fewer.

On the other hand, only 167 federal appeals were filed in Idaho last year, 1.2% of the 9th Circuit’s appeals. The one judgeship currently assigned to Idaho is more than enough to handle this modest caseload.

Adding another judgeship in Idaho would give that state 7.2% of the Circuit's judgeships, a percentage of judges six times greater than Idaho's percentage of cases.

When a judgeship is moved from one state to another it should be to a state that needs more judges. Taking a judgeship from underrepresented California and allocating it to Idaho makes little sense.

Before the President nominated Judge Smith, I contacted the White House to urge the President to nominate another Californian for this judgeship. Instead the President chose to ignore the judicial needs of the Circuit and Circuit's precedents.

I am truly sorry that Judge Smith is caught in the middle of this, particularly when this situation could have and should have been avoided.

This is not a partisan issue. This is a matter of fairness and the sensible sharing of limited resources. While California is the state losing a needed judgeship today, I would take the same position if any judgeship was moved from a state with a greater need for a judge to a state with a lesser need for a judge.

For example, in April 2003, President Bush nominated Claude Allen of Virginia for a seat previously occupied by Judge Francis Murnaghan of Maryland. Senators Sarbanes and Mikulski opposed this shift of a judgeship from Maryland to Virginia and the Judiciary Committee correctly refused to discharge Mr. Allen's nomination. The nomination ultimately expired at the end of the 108th Congress.

There is no debate that Judge Trott, whose retirement opened this seat on the 9th Circuit, was nominated to be a California judge or that his predecessor was a California judge. The Chief Judge of the 9th Circuit has stated that the "Trott seat was a California seat." As Senator Craig was recently quoted in the Legal Times, "[t]here's no question that Trott was nominated out of California."

Following his confirmation by the Senate, Judge Trott, for his own reasons, chose to locate his judicial chambers in Idaho.

Judge Trott's personal decision to move to Idaho has been used to justify nominating an Idahoan to this seat.

While I respect Judge Trott's decision to locate his chambers in Idaho, his **personal choice** does not transfer a California judgeship to Idaho, and has no bearing on the judicial needs of the 9th Circuit.

Certainly there are times when judgeships should be reallocated within a Court of Appeals. However, such reapportionment should not be haphazard and should be done for good reasons. When judges are moved within a Circuit it should be to states with greater needs for judges, not less.

To allow a judge's personal choice of where to live to change the allocation of future Court of Appeals judgeships sets a dangerous precedent.

As this nomination ignores the judicial needs of the 9th Circuit and the state of California, I must oppose it, and I intend to place a hold upon this nomination.”